

# United States Patent and Trademark Office

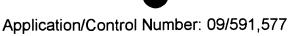
UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. Box 1450 Alexandria, Virginia 22313-1450 www.uspto.gov

DATE MAILED: 10/20/2003

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.	
09/591,577	06/09/2000	Charles A. Eldering	T702-03	2970	
27832	7590 10/20/2003		EXAM	EXAMINER	
EXPANSE NETWORKS, INC. 6206 KELLERS CHURCH ROAD			GRAVINI, STEPHEN MICHAEL		
PIPERSVILLE, PA 1894	·		ART UNIT	PAPER NUMBER	
			3622		

Please find below and/or attached an Office communication concerning this application or proceeding.

	Application No.	Applicant(s)	al
Office Assista Summers	09/591,577	ELDERING ET AL.	<i>v</i>
Office Action Summary	Examiner	Art Unit	
T. MAII INO DATE 64 in a commissión de la commissión de l	Stephen M Gravini	3622	
The MAILING DATE of this communication app Period for Reply	bears on the cover sheet v	nun the correspondence address	
A SHORTENED STATUTORY PERIOD FOR REPL' THE MAILING DATE OF THIS COMMUNICATION.  - Extensions of time may be available under the provisions of 37 CFR 1.1 after SIX (6) MONTHS from the mailing date of this communication.  - If the period for reply specified above is less than thirty (30) days, a repl - If NO period for reply is specified above, the maximum statutory period of Failure to reply within the set or extended period for reply will, by statute - Any reply received by the Office later than three months after the mailing earned patent term adjustment. See 37 CFR 1.704(b).  Status	36(a). In no event, however, may a y within the statutory minimum of th will apply and will expire SIX (6) MCs, cause the application to become A	reply be timely filed  rly (30) days will be considered timely.  NTHS from the mailing date of this communication  BANDONED (35 U.S.C. § 133).	on.
1) Responsive to communication(s) filed on 24.	<u>September 2003</u> .		
2a)⊠ This action is <b>FINAL</b> . 2b)⊠ Th	is action is non-final.		
3) Since this application is in condition for allows			is
closed in accordance with the practice under <b>Disposition of Claims</b>	Ex parte Quayle, 1935 C	.D. 11, 453 O.G. 213.	
4) Claim(s) 76-121 is/are pending in the applicat	ion.		
4a) Of the above claim(s) is/are withdra	wn from consideration.		
5) ☐ Claim(s) is/are allowed.			
6)  Claim(s) <u>76-121</u> is/are rejected.			
7) ☐ Claim(s) is/are objected to.			
8) Claim(s) are subject to restriction and/o	or election requirement.		
Application Papers	_		
9) The specification is objected to by the Examine		the Everiner	
10) The drawing(s) filed on is/are: a) acce			
Applicant may not request that any objection to th  11) The proposed drawing correction filed on			
If approved, corrected drawings are required in re		disapproved by the Examiner.	
12) The oath or declaration is objected to by the Ex	, •		
Priority under 35 U.S.C. §§ 119 and 120			
13) Acknowledgment is made of a claim for foreign	n priority under 35 U.S.C	§ 119(a)-(d) or (f).	
a) ☐ All b) ☐ Some * c) ☐ None of:	•		
1.☐ Certified copies of the priority document	s have been received.		
2. Certified copies of the priority document		Application No	
Copies of the certified copies of the prio application from the International Bu     See the attached detailed Office action for a list	reau (PCT Rule 17.2(a))	_	
14) ☐ Acknowledgment is made of a claim for domest	·		tion).
_a)  The translation of the foreign language pro	ovisional application has	peen received.	
15) Acknowledgment is made of a claim for domest Attachment(s)	uc priority under 35 U.S.C	. 33 120 anu/01 121.	
1) Notice of References Cited (PTO-892) 2) Notice of Draftsperson's Patent Drawing Review (PTO-948) 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s)	5) Notice o	s Summary (PTO-413) Paper No(s) f Informal Patent Application (PTO-152)	
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#### **DETAILED ACTION**

### Claim Rejections - 35 USC § 101

Claims 76-114 are rejected under 35 U.S.C. 101 because the claimed method of consumer advertising does not recite a useful, concrete and tangible result under In re Alappat, 31 USPQ2d 1545 (Fed. Cir. 1994) and State Street Bank & Trust Co. v. Signature Financial Group Inc., 47 USPQ2d 1596 (Fed Cir. 1998). The independently claimed invention contain recitations of descriptive material that cannot exhibit any functional interrelationship with the way in which computing process are performed and does not constitute a statutory process, machine, manufacture or composition of matter under 35 USC 101. The independently claimed steps are claimed as merely data and information gathering and processing steps which do not involve manipulation of that data with a structural element Because the independently claimed invention is directed to non-functional descriptive material which does not produce a useful, concrete and tangible result, those claims and claims depending from them, are not permitted under 35 USC 101 because the invention is considered non-statutory subject matter.

## Allowable Subject Matter

Claims 115-121 are allowed while claims 76-114 are allowable over the prior art. The following is an examiner's statement of reasons for allowance for the claims over the prior art: the claimed invention including either feature of an advertisement discretionary element retrieval which includes a selection of target market characteristics not typically associated with any one of an advertised item, target market characteristics with heuristic rules, and not directly identifiable from consumer transactions or a linear

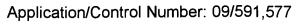


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operation on a subset of consumers to generate targeting information. The feature of advertisement discretionary element retrieval which includes a selection of target market characteristics not typically associated with any one of target market characteristics with heuristic rules, not directly identifiable from consumer transaction records, and target market characteristics not typically associated with an item being advertised an advertised item, target market characteristics with heuristic rules is found in each of the independent claims 76 (target market characteristics with heuristic rules), 86 (not directly identifiable from consumer transaction records), and 92 (target market characteristics not typically associated with an item being advertised) respectively. While the feature linear operation on a subset of consumers to generate targeting information is found in each of independent claims 110 and 115. The closest prior art is applicants' patent US 6,216,129 rejected by the examiner while the most relevant foreign reference and not patent literature is considered WO 98/34189 and US 2003/0004810 none of which expressly or implicitly teach the independently claimed advertisement discretionary element retrieval or linear operation.

## Response to Amendment

The rejection above is considered proper since the amendment occurs in the preamble of the independently claimed invention. The preamble is not considered to patentably distinguish the invention, since it is does not breath life and meaning into the claim. If the processing means such that structural interaction or mechanical intervention occurs



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in the body of the claim, then the non-statutory subject matter rejection would be overcome.

#### Conclusion

Any inquiry concerning this communication or earlier communication from the examiner should be directed to Steve Gravini whose telephone number is (703) 308-7570 and electronic transmission / e-mail address is "steve.gravini@uspto.gov". Examiner can normally be contacted Monday through Friday from 6:00 a.m. to 3:30 p.m. If applicants choose to send information by e-mail, please be aware that confidentiality of the electronically transmitted message cannot be assured. Please see MPEP 502.02. Information may be sent to the Office by facsimile transmission. The Official Fax Numbers for TC-3600 are:

After-final (703) 872-9327 Official (703) 872-9306 Non-Official/Draft (703) 872-9325

> STEPHEN GRAVINI PRIMARY EXAMINER

smg October 15, 2003